IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2005

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION NO.4342 OF 2003

V. Kamalakaran,
2/742, Pillaiyar Koil Street,
Palavaram, Chennai 74. .. Petitioner

Vs.

1. The Government of Tamil Nadu,
   represented by Secretary,
   Department of Local Administration,
   Fort St. George, Chennai.

2. Appeals Committee,
   Corporation of Madras,
   Rippon Building,
   Chennai 3.

3. The Commissioner,
   Corporation of Madras,
   Rippon Building, Chennai 3. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of writ of certiorarified mandamus calling for the records of the third respondent relating to G.O.(1Pa) No.198 dated 11.6.2002 of Local Administration and Water Supply Department (Ma.Na3), Department confirming the resolution No.247/2001 of the II respondent dated 6.6.2001 and order of the 3rd respondent dated 8.2.2001 bearing Reference Va.Thu.Na.Ka.No.A2/25260/97 and quash the same and consequently direct the third respondent to pay full pension, gratuity and other terminal benefits.

For Petitioner : Mr.A.S. Thambuswamy
For Respondent-1 and 2 : Mr.R. Lakshminarayanan GA
3rd Respondent : Mr.K.A. Ravindran

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O R D E R

Heard the learned counsels appearing for the parties.

2. The facts giving rise to the present writ petition are as follows :-

The petitioner was an Office Assistant in the Revenue Department, subsequently renamed as Mechanical Engineering Department of Chennai Corporation. The petitioner was placed under suspension on 11.8.1983 on the allegation that he had received a sum of Rs.403.75 from one Govindasamy, who had came to the Treasury for remittance of licence fee on behalf of his friend P.S. Karthikeyan and had prepared a bogus challan and issued the same to the person concerned. Prosecution was launched under the Indian Penal Code. However, the criminal trial ended in acquittal and thereafter the petitioner, who had remained under suspension, was reinstated in service on 30.4.1999. At that stage, the Corporation, however, decided to initiate departmental proceedings against the petitioner and a domestic enquiry was held. The Enquiry Officer gave finding that all the three charges against the petitioner had not been proved. Thereafter, the disciplinary authority served a notice dated 5.12.2000. In such notice, inter alia it is stated :-

> " ... Hence, in order to arrive at a final decision on the basis of the offence under Bye Law 9(2) of the Chennai Corporation third and fourth grade service (Discipline and Appeal) Byelaws, a copy of the Enquiry Report is hereby forwarded to the delinquent. In respect of the Enquiry Report, if any appeal is to be submitted in writing the same should be submitted within 15 days from the date of receipt of this Memo. Further it is hereby instructed that such appeal should be only on the basis of evidence offered at the time of the Enquiry.
>
> If the appeal in writing is not submitted within the stipulated time it is hereby informed that final orders will be passed in this regard on the basis of the Documents available."

3. The petitioner in his reply has stated that he had been exonerated by the Enquiry Officer and, therefore, the period of suspension should be treated as on duty. Thereafter, the Commissioner, Corporation of Madras, passed the impugned order on 8.2.2001. The Commissioner did not come to any categorical finding that the petitioner had committed misappropriation or forgery, but by referring to the past misconduct of the petitioner, the Commissioner has observed as follows :-

> "Further on a perusal of the conduct of the delinquent during his tenure of service it is seen that in an occurrence that took place in the year 1978 the act of misappropriation indulged by him was detected and he was punished. Since no

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decision could be arrived at on the basis of the decision taken in an earlier occurrence and therefore while perusing the conduct of the delinquent, since it had been proved that he was not honest in Money matters and therefore it is likely to infer that he might have committed the offence in the instant case also.

Hence on account of the fact that he had tarnished the fair name of the Corporation on account of the aforesaid occurrence and therefore serious punishment should be awarded to him. But while taking into account that he had been under suspension for the past about 15 years and therefore the punishment of condemnation is awarded. It is further ordered that the period of suspension from 11.8.83 to 20.4.299 could be adjusted towards the period of Leave for which he is entitled. If he so wishes, he could file the appeal to the Head of the Appointment Committee within 2 months from the date of receipt of this order."

The appeal filed by the petitioner having been rejected, the present writ petition has been filed.

4. The contention of the petitioner is to the effect that having been exonerated in the criminal case as well as by the Enquiry Officer and in the absence of any finding whatsoever that he was guilty, it was not permissible to impose any punishment on the petitioner. It has been further submitted that by virtue of the fact that the period of absence was treated as extraordinary leave without pay, the petitioner is being deprived of the aforesaid period for the purpose of calculation of pension and other retirement benefits and, therefore, the order of the Commissioner is liable to be quashed. In this context, the learned counsel appearing for the petitioner has submitted that even though the salary for the entire period may not be paid, the period of suspension should be treated as on duty at least for the purpose of calculating the retirement benefits.

5. Learned counsel appearing for the Corporation on the other hand has submitted that the Commissioner in his impugned order seems to have disagreed from the report of the Enquiry Officer and it can be inferred that he has accepted the version of the complainant regarding payment of money and, therefore, the ultimate order should not be faulted.

6. From the undisputed materials on record, it is apparent that initially after placing the petitioner under suspension a criminal prosecution had been launched and ultimately the petitioner was acquitted in such criminal case and thereafter the petitioner was reinstated in service. However, the Corporation decided to initiate departmental proceedings. Although, initiation of such departmental proceedings inspite of acquittal in the criminal case is valid in the eye of law, unfortunately for the Corporation, the Enquiry Officer in the departmental proceedings exonerated the petitioner from all the charges. Thereafter, a

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copy of such report was served on the petitioner. It was never indicated in any notice that the disciplinary authority was prima facie not accepting the report of the Enquiry Officer nor the petitioner was ever called upon to show cause as to why the report should not be rejected and a punishment should not be imposed. Law is well settled that it is open to the disciplinary authority to differ from the conclusion of the Enquiry Officer and to inflict any punishment, but, before doing so, the disciplinary authority is required to offer opportunity to the concerned person to show cause as to why different conclusion should not be taken by the disciplinary authority.

7. In the present case, admittedly, even though a copy of the report was given, the petitioner was never called upon to show cause as to why the enquiry report should not be rejected nor the disciplinary authority gave any inkling about any prima facie disagreement with the conclusion and, therefore, the petitioner had no occasion to have his say in the matter.

8. In addition to the above legal lacuna, it is also apparent that the disciplinary authority has not come to any categorical conclusion that in fact the petitioner was guilty. On the other hand, the order seems to have been based on the past misconduct of the petitioner on another occasion for which the petitioner had been punished at that stage. Obviously, the petitioner could not have been subjected to a second punishment on the basis of the allegation in 1978, when he had already been punished. Therefore, the order passed by the Commissioner is legally untenable.

9. Since a defect had crept in the proceedings of the Commissioner inasmuch as the petitioner was never specifically called upon to show cause as to why he should not be inflicted with any punishment, the question of remanding the matter for a fresh decision looms large. However, there is no dispute that the petitioner had already attained the age of superannuation and he is being paid the retirement benefits. It is therefore required to be examined whether the departmental proceedings is required to be remanded for fresh consideration.

10. The main grievance of the petitioner is to the effect that as the major chunk of the period of suspension has been treated as on leave without pay, the pensionary benefit of the petitioner has been drastically reduced. Learned counsel has therefore submitted that at least for the calculation of pension and other retirement benefits, the period of suspension should be treated as on duty without making any further payment towards salary for the aforesaid period.

11. In my considered opinion, such submission made by the learned counsel for the petitioner appears to be just and fair in the facts and circumstances of this case. The writ petition is therefore allowed in part and the order passed by the Commissioner is quashed. It is directed

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that the entire period of suspension is to be treated as on duty for the purpose of calculating the pension and other retirement benefits and such period shall be taken into account for calculating increments and other service benefits such as pension and gratuity. However, no financial benefit in the shape of additional salary shall be payable, save and except any amount payable towards suspension allowance.

The question as to whether the petitioner is entitled to any further amount towards suspension allowance is required to be considered as it has been submitted that no suspension allowance had been paid from 1.4.1996 to 29.4.1999. This aspect has to be find out by the third respondent and if it is found that suspension allowance had not been paid between 1.4.1996 and 29.4.1999 or any part thereof, such suspension allowance shall be calculated and paid within a period of four months from the date of receipt of a copy of this order. The revised amount payable towards pension and other retirement benefits, such as gratuity, etc., should also be calculated and paid within a period of four months from the date of receipt of a copy of this order. No costs.

ajr/dpk

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To

1. The Secretary to the Govt. of Tamilnadu,
   Department of Local Administration,
   Fort St. George, Chennai.

2. Appeals Committee,
   Corporation of Madras,
   Rippon Building, Chennai 3.

3. The Commissioner,
   Corporation of Madras,
   Rippon Buildings, Chennai 3.

1 cc To Mr.A.S.Thambuswamy, Advocate, SR.44925.
1 cc To Mr.K.A.Ravindran, Advocate, SR.44914.

W.P.NO.4342 OF 2003

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